

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-010115

08/20/2018

HON. PAMELA GATES

CLERK OF THE COURT
K. Ballard
Deputy

ROBERT J BARON

ROBERT J BARON
18631 N 19TH AVE
158-288
PHOENIX AZ 85027

v.

HONORHEALTH, et al.

ANDREW S ASHWORTH

RULING

Before the court are the following pleadings:

1. Defendant's July 17, 2018 Motion for Sanctions for Plaintiff's Failure to Comply with Court Order Pursuant to Rule 37(b)(2)(A), Plaintiff's August 2, 2018 Response, Defendant's August 14, 2018 Reply, and Plaintiff's August 14, 2018 Motion for Leave to File Sur-Reply in Response to Defendant's False and Improper Reply.
2. Plaintiff's August 17, 2018 ARCP Rule 26(h) Motion for Sanctions on Defendant and Defense Counsel for Abuse of Discovery Including Perjury and Fraud Upon the Court.¹

¹ Also pending before this court are: Plaintiff's July 19, 2018 Rule 26 Motion for Protective Order and Limitation Against Unlawful Discovery, Defendant's August 7, 2018 Response, Plaintiff's July 22, 2018 pleading entitled "ARCP Rule 37 Motion to Compel Discovery and Request for Sanctions and Failure to Comply with Court Order," and Defendant's August 8, 2018 Reply.

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By way of background, on May 15, 2018 Defendant Scottsdale Healthcare Hospitals dba HonorHealth (hereinafter “Defendant”) filed a Memorandum of Outstanding Discovery Issues, seeking: 1) responses to Defendant’s First Request for Production of Documents, (2) proper responses to Defendant’s First Set of Non-Uniform Interrogatories, and (3) a proper Rule 26.1 Disclosure Statement. Specifically, Defendant requested that the court order Plaintiff to produce his federal and any state income tax returns for the previous six years. The parties agree Plaintiff has produced his 2016 tax return.

Plaintiff placed his employment and earnings history at issue in this matter. *See* Second Amended Complaint at ¶¶ 63-64 & 122. Consequently, to evaluate Plaintiff’s claim for lost wages, Defendant is entitled to know and evaluate Plaintiff’s pre- and post-termination earnings.

On June 8, 2018, this court ordered that, on or before July 15, 2018:

1. Plaintiff shall produce all tax returns for the tax years 2013 through 2017. If he has not filed tax returns for any year, he shall produce all pay stubs or other records showing income for that year.
2. Plaintiff shall produce the information requested concerning his educational background and Epic certifications.
3. Plaintiff shall produce the information requested concerning post-termination employment.²

2018 Response. Plaintiff’s time for filing a Reply has not expired; therefore, rulings on the motions referenced in this footnote are not included in this minute entry. The court does not require a responsive pleading to rule on Plaintiff’s August 17, 2018 ARCP Rule 26(h) Motion for Sanctions on Defendant and Defense Counsel for Abuse of Discovery Including Perjury and Fraud Upon the Court.

² In its Memorandum of Outstanding Discovery Issues, Defendant requested that Plaintiff produce all documents relating to his efforts to secure employment after his termination by Defendant, including any applications, inquiries, communications, and offer letters. Defendant also requested production of Plaintiff’s actual job applications, including any resumes and references, and any communications Plaintiff had with any prospective employer, including explanations as to why he was not accepted for these positions.

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4. Plaintiff shall comply with Rule 26.1(a)(3) with respect to all witnesses Plaintiff plans to call at trial. Plaintiff's current disclosure does not meet this standard. Failure to disclose a witness in a way that complies with Rule 26.1(a)(3) will result in Plaintiff being barred from calling that witness or using their testimony.
5. Plaintiff shall disclose a computation and measure of damages as required by Rule 26.1(a)(7).

The court denied all other requests by Defendant to compel discovery or disclosure from Plaintiff. *See* Minute Entry dated June 8, 2018. In the same ruling, Defendant was ordered to provide Plaintiff with answers to Interrogatories 22, 23, 28, and 29 on or before July 15, 2018. The court denied all other requests from Plaintiff to compel discovery or disclosure from Defendant.

On July 2, 2018, Plaintiff filed Motions for Reconsideration seeking that the court reconsider, *inter alia*, the June 8, 2018 order requiring Plaintiff to produce tax returns for 2013, 2014, 2015, and 2017 and post-termination employment records beyond 2016. The court denied Plaintiff's Motions for Reconsideration on July 31, 2018.

After Plaintiff filed his Motions for Reconsideration but before the court issued its ruling, Defendant filed a Motion for Sanctions for Plaintiff's Failure to Comply with Court Order Pursuant to Rule 37(b)(2)(A) on July 17, 2018. Plaintiff filed his Response on August 2, 2018. Defendant filed its Reply on August 14, 2018. On the same day, Plaintiff filed a Motion for Leave to File Sur-Reply in Response to Defendant's False and Improper Reply. The court finds no basis for a sur-reply. Therefore,

IT IS ORDERED denying Plaintiff's Motion for Leave to File Sur-Reply and striking Plaintiff's Sur-Reply.

To date, Plaintiff has failed to comply with the court's order, requiring him to produce his 2013, 2014, 2015, and 2017 tax returns or to provide all pay stubs or other records showing income if Plaintiff did not file tax returns. Rule 37(b)(2)(A) of the Arizona Rules of Civil Procedures provides that if a party fails to obey an order to provide discovery, the court may enter further just orders, including: 1) directing the matters described in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; 2) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; 3) striking pleadings in whole or in part; 4) staying further proceedings until the order is obeyed; 5) dismissing the action or proceeding in whole or in part; 6) rendering a default judgement, in whole or in part, against the disobedient

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party; or 7) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Having found that Plaintiff has failed to comply with this court's June 8, 2018 ruling to produce his tax returns or alternative documentation of income and further having found that there is no substantial justification for Plaintiff's failure to comply with the Court's Order,

IT IS HEREBY ORDERED granting the Motion for Sanctions and imposing the following sanctions upon Plaintiff, which the Court, in its discretion, finds to be just under the circumstances:

1. By no later than **9:00 a.m. on August 27, 2018**, Plaintiff must provide to Defendant:
 - a. All tax returns for the tax years 2013, 2014, 2015, and 2017. If he has not filed tax returns for any year, he shall produce all pay stubs or other records showing income for that year; and
 - b. All documents relating to Plaintiff's efforts to secure employment after his termination by Defendant, including but not limited to any job applications, resumes, reference letters or lists of references, inquiries regarding employment, offer letters, and communications Plaintiff had with any prospective employer following his termination to date, including explanations as to why he was not accepted for any position or a notification to Defendant's counsel, avowing that he has produced all documentation responsive to Order 1(b).³

³ Plaintiff asserted that he provided Defendant with a complete and exhaustive record of his job search efforts in all of 2016. The records include email records with prospective employers and job applications. Plaintiff's failure to produce additional documents may result in the court designating certain facts to be established for purposes of the action, including that the produced documents reflect the complete and exhaustive collection of records and documents reflecting Plaintiff's efforts to secure employment after his termination by Defendant, including all job applications, resumes, reference letters or lists of references, inquiries regarding employment, offer letters, and communications Plaintiff had with any prospective employer following his termination to date, including the written information Plaintiff communicated to prospective employers and the employers' written explanations as to why Plaintiff was not accepted for any position.

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In the event that Plaintiff fails to comply in full with Order 1(a) and (b) above, the court informs Plaintiff that the court will likely dismiss his Second Amended Complaint with prejudice and enter judgment in favor of Defendant.

IT IS FURTHER ORDERED extending all discovery deadlines in this matter for 45 days from the filing date of this ruling for Defendant only.

IT IS FURTHER ORDERED awarding Defendant reasonable attorneys' fees and costs incurred in attempting to obtain production of Plaintiff's tax returns and post-termination employment efforts ordered on June 8, 2018 and ordered for a second time herein. Defendant may submit an application, demonstrating the reasonable attorneys' fees and costs. Plaintiff may file a responsive pleading to Defendant's application for attorneys' fees and costs. No Reply is permitted.

The court also considered Plaintiff's August 17, 2018 Motion captioned, "ARCP Rule 26(h) Motion for Sanctions on Defendant and Defense Counsel for Abuse of Discovery Including Perjury and Fraud Upon the Court." The court finds no responsive pleading is necessary to rule on the Plaintiff's Motion.

IT IS ORDERED denying Plaintiff's August 17, 2018 Motion captioned, "ARCP Rule 26(h) Motion for Sanctions on Defendant and Defense Counsel for Abuse of Discovery and Including Perjury and Fraud Upon the Court."